

A U.S. Constitution with DEMOCRACY IN MIND

by Virginia Rasmussen and Greg Coleridge

Second of two articles on the U.S. Constitution, Spring 2007

By What Authority, a publication of the Program on Corporations, Law & Democracy (POCLAD) <http://www.poclad.org/bwa/Spring07.htm>

Editor's note: We received a generous number of responses to our request for feedback on last issue's article, "The U.S. Constitution: Pull the Curtain." The point most frequently made cautioned us on haste, on We the People being "up to such a task." Were we not "opening a can of worms?" One correspondent suggested that "current 'oilgarchs' would like nothing better than for the people themselves to delegitimize the one document they can't... totally erase."

We in POCLAD respect the warnings and recognize the danger of leaping onto unprepared ground. Nonetheless, the Constitution seeps its way into current realities for both good and ill. If more deeply understood it can serve us well in our work toward a worthier "founding" document and democracy. At this time we might see this exploration as a learning tool, an exercise. And isn't it a juicy one?

Introduction

"...it may be proved that no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. ...Every constitution, then, and every law, naturally expires at the end of 19 years. If it be enforced longer, it is an act of force and not of right." --Thomas Jefferson in a letter to James Madison, 1789

The focus of POCLAD's vision is democracy. The work required to move toward a democratic society is about us – our learning, rethinking and claiming the power to self-govern. That power is largely expressed and experienced through law and in the mutual obligation law, in part, engenders. In many would-be democracies, the nature and spirit of that law are captured in a Constitution.

If constitutional ground rules are weighted against people and in favor of property, against life and for the material, our capacity to achieve a just and democratic society is doomed unless we critique and change that defining law.

Constitutional change by the people of the U.S. is near impossible. It has occurred through the amendment process, a demanding exercise

in social movement-building over generations. We can opt to argue and organize on behalf of more democratic judicial interpretations of the Constitution, a noble if plodding single-issue approach that will leave any real democracy constitutionally-impaired for centuries. Can we do better? Should we try?

At this time we're not calling for a Second Constitutional Convention, but extending an invitation to reflect on a variety of questions we would call such a gathering. Let's start at the beginning. Who would be there and how would they be chosen? What elements would be included and who would set the agenda? What processes of facilitation, discussion, deliberation, conflict resolution, and decision-making would be used? What rights and protections would be guaranteed for people and for nature's many life forms? How would powers be delegated in a Constitution that allowed democracy to flourish and be sustained over time?

Jamin Raskin, a teacher of constitutional law at American University, claims that the Constitution "remains deeply compromised by its historical concessions to the political institutions of white supremacy and the interests of elite rule." For Raskin, "defending the Constitution requires changing it." There will be "a lot more constitutional growth" if we are to make of ourselves a democratic people.

This imagining and reframing in fundamental, holistic ways can clarify our vision and show us the smarter, truer path to change. It can help us make of the Constitution the "living document" of Jefferson's imagination.

The Preamble

The Constitution's opening holds the possibility, if not the promise, of democracy. It can serve as tether and guide to later passages.

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

With the rights of sovereignty come the responsibilities of sovereignty. Can we find a way to impress these responsibilities and obligations in a constitutional document? Should we? **Placing our lives and governance in the hands of our neighbors and country-mates raises serious doubt today. It can only be done if each of us has sufficient trust in the other— admittedly, a tall order. What does such confidence entail?** What should our educations include to build

that confidence? What kind of democratic skills must become part of our every day, thus shaping assumptions about who each of us is and can be trusted to be? What do the earth's sustaining processes have to tell us? Is it appropriate that any new Constitution address the provision of the time and venues for tending this participatory democratic work?

Rights Due the People

One of the central tenets of the Declaration of Independence is the right of the people to alter or abolish any government that no longer serves them. Nowhere is this critical feature found in the Constitution. Adapting the Declaration's language slightly, we might include:

"We hold these truths to be self evident, that all people are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, Justice and the pursuit of Happiness. That to secure these Rights, Governments are instituted among people, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. ...But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

Our First Amendment provides people with valued protections from government intrusion. It has served important aspects of democratic participation and dissent. But neither the Bill of Rights nor the original Constitution grants the people the powers to govern in direct and defining ways. Access to those rights and powers is held by a propertied and corporate elite in league with an economic system designed to keep the governing few relentlessly safe and separate from the many.

Many of our state constitutions contain decisive language on behalf of a sovereign people and the prohibition of any kind of corporate governing rights. We have this valuable history to draw upon.

"All political power is inherent in the people, and governments derive their just powers from the consent of the governed" (Arizona Constitution).

"The people of this Commonwealth have the sole and exclusive right of

governing themselves... Government is instituted for the common good, for the protection, safety, prosperity and happiness of the people, and not for the profit, honor, or private interest of any one man, family, or class of men..." (Massachusetts Constitution).

Were we to have a convention for a constitutional rewrite, **what rights would be guaranteed in order to make freedom, justice and democracy real for all, children included? How would we assure that the right to self-governance, to shape both the political and economic decisions that define our lives, rest with the people?**

We can learn from the grassroots work of Democracy Unlimited of Humboldt County (DUHC, www.duhc.org) and include in our drafting process the denial of personhood designation or constitutional rights and powers to any other than natural persons. Corporations do not qualify! See the Winter 2007 issue of *By What Authority* for more information on this work.

And how would we write into our founding law civilian control over military institutions and so-called "intelligence" establishments, both of them now far beyond the reach of and accountability to We the People? When military solutions are preferred over attention to policy and political engagement, the least democratic of our institutions are empowered, soaking up resources needed for people's needs and enabling ideologues to set national priorities.

The 1948 Universal Declaration of Human Rights, never ratified by the U.S. Senate, addresses a magnificent array of rights in seven categories: civil, economic, cultural, political, social, gender, and developmental. The articles are simply stated. Could we do better than to draw from this work of Eleanor Roosevelt and her U.N. colleagues nearly sixty years ago?

Here is a selection of those rights that we have yet to take for ourselves in this country, including the right to define and control our political process, the right to majority rule in presidential elections, along with the right to equally funded public education, to health care, housing, meaningful work and a living wage:

- Everyone, as a member of society, has the right to social security and is entitled to... the economic, social and cultural rights indispensable for their dignity and the free development of their personality.
- Everyone has the right to work, to free choice of employment, to just and favorable conditions of work...
- Everyone, without discrimination, has the right to equal pay for equal work.
- Everyone has the right to form and to join trade unions for the

- protection of their interests.
- Everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing, medical care and necessary social services...
 - Everyone has the right to education... technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
 - Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms...
 - Everyone has duties to the community in which alone the free and full development of their personality is possible.

Additionally, we'd want to consider the people's power to recall elected leaders. Would these go beyond the current requirements for impeachment? Would they be measures more directly accessible to the people?

The Rights of Nature, Property and the Commons

"The right of citizens of the United States to use and enjoy air, water, wildlife, and other renewable resources determined by the Congress to be common property shall not be impaired, nor shall such use impair their availability for the use of future generations." --Indigenous People's Seventh Generation Amendment

How do we, as participants in a diverse global community of communities, establish the limits essential to a sustainable functioning of the parts and the whole? No longer can we see ourselves as safe and apart from the limits imposed by a finite planet or the stress and deficiencies "of less happier lands," to quote the Bard.

As the legitimate source of all governing authority, it is the people's right to draw inspiration from nature and our diverse human communities in creating a Constitution and a new kind of jurisprudence. We can, with sufficient courage, create a people-earth law rather than allowing the "judges" to impose a kind of law that flows from the patriarchal, aristocratic, empire seeking, slave-owning, corporate structures of the past. The future, if there is to be one, must evolve from a democratic and earth-connecting framework that reveres all of life.

Christopher Stone, in his classic essay, "Should Trees Have Standing?", asks what kind of public authority would be required to "give some amount of review to actions that are colorably inconsistent" with the legal rights we grant to members of the

environmental community? How will our new Constitution define property that can be held in private such as clothing, the tools of one's trade, home and furnishings, and that which shall be held in common? In what ways can we grant protections to both the natural and the social commons – water, land, language, works of creativity, the airwaves and media?

The Community Environmental Legal Defense Fund (CELDF, www.celdf.org) is a resource for our constitutional writing process. It has assisted communities in Pennsylvania to write ordinances that acknowledge the rights of "natural communities and ecosystems" and establish a "system to enforce and protect those rights against corporations and other business entities."

Delegation of Powers and Amendment Process

The structure of government and the jurisdictions to which we delegate decision-making over the political, social, cultural, economic and environmental firmament require fresh thinking. Scale is critical to effective governance, whether in relation to the place-based, contextual knowledge necessary for earth-stewardship or to correct failing political and social systems.

"...with all human processes: undisciplined expansion and self-inflation led only to destruction. Apart from the well-being of earth, no subordinate life system can survive. So it is with economics and politics: any particular activity must find its place within the larger pattern, or it will die and perhaps bring down the larger life system itself. This change of scale is one of the most significant aspects in the change of consciousness that is needed." –Thomas Berry, The Dream of the Earth

How can we draw boundaries within the country so that people's learning and experience best serve the resiliency of human and earth systems? Decentralizing decision-making units and harmonizing them with bioregional systems may draw wider contemplation as awareness grows of human-caused climate change and looming environmental threats.

"The survival of our species and health of the Earth family depends on our ability to transform governance systems so that humans become part of the ecological matrix of biological and cultural diversity." – Vandana Shiva

What processes might we establish to allow for revisiting and amending this new Constitution? Should we heed Jefferson's conviction that Constitution and law need a rewrite every generation?

Lastly, constitutional rethinking largely concerns matters of rights and protections. But such matters are inadequate to the fair, democratic, sustainable conduct of national and global life. As referenced at the outset of this essay, "mutual obligations" play a central role within all communities, great and small. Should rights be gained, we'd face the threshold question, "What do we do now?" How do we hang on to hard won rights for ourselves, others, the flora and fauna?

Our obligations to one another are the consequence of growthful social learning that runs deeper than law and Constitutions. If we fail to develop obligation's necessary role in the coming century, we will fail the best intentions written into any new U.S. Constitution.

References and Recommended Reading

Thomas Berry, *The Dream of the Earth*, San Francisco: Sierra Club Books, 1988. Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice*, Green Books and The Gaia Foundation, 2003. Robyn Eckersley, *The Green State: Rethinking Democracy and Sovereignty*, Cambridge, MA: MIT Press, 2004. David Ehrenfeld, *Beginning Again: People & Nature in the New Millennium*, New York: Oxford University Press, 1993. Vandana Shiva, *Earth Democracy: Justice, Sustainability and Peace*, Cambridge, MA: South End Press, 2005. Christopher Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, Los Altos: William Kaufmann, Inc., 1972.